not a party to the *habeas corpus* proceedings. Further, he had made uncalled for statements and attacks on the learned Senior Federal Counsel, championing the judiciary under false pretences and generally had interfered with court proceedings which were not his business. These acts of the respondent, according to the applicant, amount to a contempt of court.

I found that the alleged contempt of court, if any, occurred before Mr. Justice Mustapha in the High Court at Alor Star. That court has full powers to deal with contempt of itself – article 126 of the Federal Constitution; section 13(2) of the Courts of Judicature Act 1964. I accordingly held that the application for leave should be made there. As far as the alleged remarks against the learned Senior Federal Counsel are concerned, it is for the Attorney-General to take whatever steps he deems appropriate. In the event, I dismissed the application with costs as the respondent was served.

Order accordingly.

Solicitors: *Karam Singh Veriah & Co.; Karpal Singh & Co.*

CAXTON (KELANG) SDN. BHD. v. SUSAN JOAN LABROOY & ANOR.

[O.C.J. (Siti Norma Yaakob J.) December 12, 1986]

[Kuala Lunpur – Originating Summons No. F1680 of 1985]

Land Law – Sale and purchase of property – Sale and purchase of shares – Whether the two agreements dependent on each other – Whether plaintiff has right to sue – Whether premises have been effectively decontrolled.

Landlord and Tenant – Rent control – Whether premises have been effectively decontrolled – Whether certificate of the Rent Tribunal valid – Rent Control Act 1966, s. 23.

In the present case, the plaintiff was in occupation of certain premises, the freehold title of which were in the joint names of the defendants. The shareholdings of the plaintiff were, however, owned by the defendants. On July 5, 1984 all the four shareholders of the plaintiff sold their equitable interests to two persons, namely, Joseph De Silva and Tan Boon Lai who were directors of the plaintiff. The sale of the shares was also subject to a specific covenant on the part of the four vendors to allow the plaintiff to occupy the premises for an indefinite period at a normal rental of $300 per month (clause 6(e)).

On December 14, 1984, the defendants entered into a sale and purchase agreement of the premises with De Silva and Tan. However, the agreement fell through because the purchasers were unable to pay the purchase money.

In the present case, the plaintiff sought two declaratory orders, namely:

(1) upon the true construction of clause 6 (e) of an agreement dated July 5, 1984, it was entitled to occupy No. 20, Jalan Station, Kelang ("the premises") as a tenant of the defendants at a monthly rental of $300 until such tenancy has been lawfully terminated and that the defendants were estopped from contending otherwise

(2) for so long as the tenancy is in existence, the defendant had no right to re-enter or repossess the premises other than in proceedings under the Control of Rent Act 1966 as the premises was rent-controlled.

The defendants contended that the failure on the part of the two purchasers to complete the purchase of the freehold title disentitles the plaintiff to claim a tenancy under clause 6(e) of the first agreement as both agreements were executed concurrently. The defendants also argued that the plaintiff has no right to sue on the agreement and that under clause 6(e) they had only a licence to occupy the premises. The plaintiff also disputed the validity of the certificate of the Rent Tribunal under which the premises were purportedly decontrolled.

Held, granting the declarations: (1) the two agreements were not in any way concurrent to each other. They existed quite independent of each other;

(2) common intention could not be imputed in the present case where there was no evidence to that effect. Moreover, this would be contrary to sections 91 and 92 of the Evidence Act 1950;

(3) in the present case, the plaintiff was not suing on the agreement as such but was trying to establish a right given to it under the agreement and to that extent sought a declaration that it was a tenant of the defendants;

(4) clause 6(e) had not altered the status of the plaintiff to that of a licensee. On the contrary, by virtue of section 115 of the Evidence Act 1950, the defendants are estopped from denying otherwise;

(5) the premises have not been effectively decontrolled. Therefore the defendants have no right to re-enter or repossess the premises otherwise than pursuant to the Control of Rent Act 1966.

ORIGINATING SUMMONS.

Murthi for the plaintiff.

A.J. Dason for the defendants.

Cur. Adv. Vult.

Siti Norma Yaakob J.: In this suit, the plaintiff, a company dealing in the business of printing press and the sale of stationeries, seeks two declaratory orders, namely:

(1) upon the true construction of clause 6(e) of an agreement dated July 5, 1984, it is entitled to occupy No. 20, Jalan Station, Kelang ("the premises") as a tenant of the defendants at a monthly rental of $300, until such tenancy has been lawfully terminated and that the defendants are estopped from contending otherwise;

(2) for so long as the tenancy is in existence, the defendants have no right to re-enter or repossess the premises other than in proceedings under the Control of Rent Act 1966 as the premises is rent-controlled.

The undisputed facts show that the plaintiff had been in occupation and conducting its business at the premises long before July 5, 1984. At that time, all the shareholdings in the plaintiff were owned by the defendants and their parents but the freehold title of the premises were and are still registered in the joint names of the defendants. However, on July 5, 1984, all the four shareholders of the plaintiff sold their equitable interests to two persons, namely, Joseph De Silva and Tan Boon Lai, who are also directors of the plaintiff and following this takeover, both De Silva and Tan took over absolute control and management of the plaintiff. The sale of the shares was also subject to a specific covenant on the part of the four vendors to allow the plaintiff to occupy the premises for an indefinite period at a normal rental of $300 per month (clause 6(e)).

At the time of executing the sale and purchase agreement, the defendants as the registered owners of the freehold title of the premises granted both De Silva and Tan an option to purchase the property, to be exercised by them within a month from November 20 to November 30, 1984. Neither De Silva nor Tan exercised the option and by effluxion of time, it expired on November 30, 1984.

However, on December 14, 1984, the defendants entered into a sale and purchase agreement with De Silva and Tan whereby De Silva and Tan agreed to purchase the freehold title of the premises from the defendants for a consideration of $285,000. As part payment, the two purchasers made a 10% down payment, the balance to be settled within three months from the date of the agreement. However, despite extensions given by the defendants, the sale was aborted as the purchasers were not able to meet payment of the balance of the purchase price. It is the defendants' contention that the failure on the part of the two purchasers to complete the purchase of the freehold title disentitles the plaintiff to claim a tenancy under clause 6(e) of the first agreement as both the agreements were executed concurrently.

Perusing both agreements, they are easily distinguishable. The first agreement dated July 5, 1984 is for the sale of shares made between the defendants and their parents on one part and De Silva and Tan on the other. The second agreement dated December 1, 1984 is for the sale of the freehold title of the premises and made between the defendants as the registered owners on one part and De Silva and Tan on the other. In both agreements, both De Silva and Tan are acting in their personal capacities and not as representatives of the plaintiff, a separate legal entity altogether and neither is the plaintiff a party to either agreement. There is also no mention in the second agreement that the plaintiff's tenancy as expressly declared in clause 6(e) of the first agreement is any way to be determined in the event of the non-performance of the second agreement. To that extent, I would hardly consider the two agreements to be in any way concurrent to each other but that they exist quite independent of each other.

If it was contemplated that the parties had intended that clause 6(e) was inserted as an incentive for De Silva and Tan to purchase the freehold title and when the sale fell through, clause 6(e) ceased to have any legal effect, then that common intention must be clearly spelt out in the second agreement. This is not so as the agreement does not make any reference to clause 6(e) and I do not consider that it is proper for me to impute common intention when there is no evidence to that effect. Moreover, this will be contrary to sections 91 and 92 of the Evidence Act 1950.

Quite apart from the issue of common intention, the defendants have argued that this action is not maintainable by the plaintiff as it is not a party to the first agreement and being a stranger cannot sue on the agreement. I do not consider that this argument holds any merit as the plaintiff is not suing on the agreement as such but is trying to establish a right given to it under the agreement and to that extent, seeks a declaration that it is a tenant of the defendants. P.W. Young in his book on *Declaratory Orders*, 2nd Ed., defines a declaratory judgment as one that does not involve a cause of action in the usual sense and that six factors must be present before there can be a declaratory order. These are:

(1) There must exist a controversy between the parties.

(2) The proceedings must involve a "right".

(3) The proceedings must be brought by a person who has a proper or tangible interest in obtaining the order, which is usually referred to as "standing" or "*locus standi*".

(4) The controversy must be subject to the court's jurisdiction.

(5) The defendant must be a person having a proper or tangible interest in opposing the plaintiff's claims.

(6) The issue must be ripe, *i.e.* it must not be of academic interest, hypothetical or one whose resolution would be of no practical utility.

All these six conditions are met by the facts of this case and there is therefore no merit to the defendants' contention that the plaintiff's claims cannot be maintained.

The defendants have also stated that clause 6(e) merely operates to give the plaintiff a licence to occupy the premises. To consider this, I must look at the conduct of the parties before the first agreement was entered into. The defendants have never disputed that before July 5, 1984, the plaintiff was their tenant. Their own mother in an affidavit affirmed on July 7, 1986 admitted that since April 28, 1977, the plaintiff had been a tenant of the premises. There is no evidence of any written tenancy agreement drawn up between the plaintiff and the defendants and I doubt there had been one as at that time the defendants and their parents owned the plaintiff. The plaintiff had continued to be in exclusive occupation of the premises and there has been no change as to the status of the plaintiff up to the time when the first agreement was executed. The plaintiff has not surrendered the tenancy and neither have the defendants lawfully terminated it and there is evidence that the defendants continued accepting the $300 rental from the plaintiff up to August this year. That being the case, clause 6(e) has not altered the status of the plaintiff to that of a licensee. On the contrary, there is a declaration of a tenancy at $300 rental per month, a declaration that has been acted upon by the plaintiff as it continued paying rental at $300 per month from the date of the first agreement, which payments have been accepted by the defendants without any reservation and by virtue of section 115 of the Evidence Act 1950, the defendants are now estopped from denying otherwise. To that end, I declare that the plaintiff is entitled to occupy the premises at a rental of $300 per month until lawfully terminated and the defendants are estopped from denying otherwise.

Lastly, I come to consider the effect of the certificate of the Rent Tribunal dated April 28, 1977, the validity of which is being questioned by the plaintiff. The certificate was issued pursuant to section 23 of the Control of Rent Act 1966 which not only sets out the circumstances under which controlled premises can be decontrolled but also provides the procedure whereby the tenant ceases to enjoy the benefits and protection of the Act. As there were no evidence led as to the circumstances leading to the issue of the certificate, I can only go by the certificate to reach certain conclusions. On the face of it, an application dated February 4, 1977 for decontrol must have been made by the mother of the defendants as the landlady of the premises. As the tenancy in this case is a monthly tenancy, she could not possibly be taking advantage of section 23(1)(a) of the Act which excludes monthly tenancies, in which case she must be acting under section 23(b) which envisages the situation of a tenant wishing to surrender his tenancy willingly or required by law to do so. In this case, as the plaintiff had maintained all along that it was not aware that the premises had been decontrolled, it can hardly be right to expect that it was responsible for the application to decontrol. This is so as the plaintiff does not stand to benefit from such an application. Section 23 also makes it mandatory for such a certificate to be served on the tenant as it is only upon such service that the tenant ceases to enjoy all the benefits and protection of the Act. In this case, there is no proof that the plaintiff had been served with such a certificate and that being the case, the certificate did not have the desired effect and to that extent, I hold that the premises have not been effectively decontrolled under the Act. That being the case, I declare that the defendants have no right to re-enter or repossess the premises otherwise than pursuant to the Control of Rent Act 1966.

In addition to the two declarations, I also make an order that the defendants pay the costs of this originating summons.

Order accordingly.

Solicitors: *Murthi & Partners; Dason & Co.*